

Summary of Testimony from the Public Hearing on February 27, 2012					
Speaker	Organization	Support	Opposed	Date Recorded	Summary of Comments
Joesph McLane	Cambridge Walk II HOA	x		2/27/12	Wants pedestrian friendly development. Somewhere to walk to, thinks there is a need for more apartments, more street life
Ann Goodman	Resident of 1109 Clagett Drive	x	x	2/27/12	Likes storm water, green roofs, pervious pavement, and landscape improvements. Sees the project as an improvement for watershed issues; however is concerned that the applicant has not addressed the surrounding communities and that small businesses will be replaced with highend retail. Added pollution is a negative. Concerned with the cumulative effects on infrastructure and APFO with this project and 5 other developments in the area .
Robert Dalrymple & Jim Alexandar	Applicant	x		2/27/12	Gave an overview of the project and items the applicant is seeking approval for.
Chris Sines	Resident Brooke Drive	x	x	2/27/12	Does not object to the project, but does object to the building height. Suggests that building be no higher than the nearby Hilton Hotel
Doug Reinel	Resident Longwood Drive	x			Supports this project and thinks this is the type of development that should be happening near transit. Noted a blog post that talks about the benefits of height extension in contributing to more affordable housing and other benefits of development near transit.

Judy Miller	Resident		x	2/27/12	Live, work, play myth that will bring expensive high-rise development and no low-rise family-friendly development. Asked if growth in one location is smart. Suggested developer go to Prince George's County where they need growth.	
Christina Ginsberg	Persident, Twinbrook Citizen's Association		x	2/27/12	Comments are restated and expanded upon in written testimony.	
Summary of Written Testimony from the Public Record, which was held open from February 27, 2012- March 12, 2012						
Author	Organization	Support	Opposed	Date Recorded	Summary of Comments	Exhibit #
Christina Ginsberg	Twinbrook Citizen's Association		x	3/12/12	Requests all waivers be denied. Applicant provided sufficient parking. The site should be kept in a finished state at all times. Claims shadow from building will shade single family homes (the applicant has shown shadow will not shade any single family home). Makes general policy comments about zoning, APFO, notice and school impact tax regulations.	1
Robert Darlymple & Heather Dlhopsky	Linowes and Blocher LLP (the Applicant)	x		3/12/12	Responded to issues and/or concerns raised in the public testimony	2
Pat Harris	Lerch Early & Brewer	x		3/12/12	Gives background of a proposed sewer club between this developer and the developers of 1800 Rockville Pike and 1900 Chapman and requests language for a proposed condition be added to the approval.	3
Matthew Hurson	Hines			3/12/12	Requests language for a proposed condition be added to the approval, related to sewer club.	4



Public Hearing comments on the "Fuddrucker's" site: Project Plan PJT2012-00002, to allow redevelopment of an existing retail center into a mixed-use development to be known as Twinbrook Metro Place at 1592 Rockville Pike; Twinbrook Partners LLC, applicant.

Christina Ginsberg

to:

Mayor Council City

03/12/2012 04:48 PM

Show Details

To the Mayor and Council:

The following comments are intended to document and amplify the concerns brought to you at the televised public hearing on February 27, 2012. They are intended to be included in the public record on the "Fuddrucker's" site: Project Plan PJT2012-00002, to allow redevelopment of an existing retail center into a mixed-use development to be known as Twinbrook Metro Place at 1592 Rockville Pike; Twinbrook Partners LLC, applicant.

ASSUMED WAIVERS

First of all, the project as presented to the M&C assumes that the M&C will grant ALL of the requested waivers:

- a. reduction of the parking requirement from 2199 spaces to 1266 spaces
- b. height waiver (applicant requests increase from 120 ft to 150 ft) plus possibly waiver of the 65 ft height on the frontage requirement (not clear in application)
- c. waiver of the required road width (applicant wants to provide roads smaller than specified in code)
- d. waiver of rounding property lines at street intersections (this increases the building footprint size, see development data table "Waivers and Modifications", essentially gifts more building volume to applicant)

Since the development data table and the presentation shown to the M&C on February 27 all assume that these waivers will be granted, it UNDERESTIMATES the size, bulk, scope and impact of the project.

The applicant has not submitted a rendering of the project WITHOUT the additional waived stories, WITH appropriately sized parking garages, and WITH appropriately sized streets. This makes it difficult to judge the actual project impact should the M&C deny any or all of the waivers.

We are requesting that ALL the waivers be denied. At the least, the M&C should request a true rendering of the project without the requested waivers before making any decisions.

PARKING ESTIMATES

The applicant's materials show that 2199 parking spaces would be needed to service the proposed buildings under the RORZOR zoning parking requirements. The proposal *as shown with 150 foot buildings* would actually require almost double the parking spaces to adequately accommodate 2199 cars. This would require either adding stories, or adding underground spaces. The applicant is claiming that it only requires 1266 spaces under space sharing algorithms. The M&C should consider that the applicant may request modifications in the future that would add additional height to this project if the applicant changes their estimates of parking requirements.

We consider that providing sufficient parking is the responsibility of the applicant. Therefore:

- a. **The M&C should clarify that it will not increase the bulk size of this proposed development should the applicant desire to modify the project or add parking in the future.**
- b. **The M&C should clarify that it will not subsidize this project in the future by building supplemental garages with public funds (as in Town Center) or use its credit and good name to issue bonds for such purposes.**

PHASING AND PUBLIC RESPONSIBILITY

The project is proposed to proceed in three phases. Based on our experience with the Twinbrook Station project, which has significantly altered/extended its timeline, **it is recommended that the M&C request a binding timeline for each phase completion. The M&C should also impose a requirement that each block (phase) be kept in a "finished" state at all times** - that is, when one phase is completed or being worked on, the property to be completed in the other phases be landscaped, have the complete street grid in place along with sidewalks, and landscape quality grass on the uncompleted blocks. That is, that the unfinished phases are not allowed to persist for years as "construction sites" but are maintained in a clean and publically accessible state.

NECESSARY RORZOR ZONING MODIFICATIONS

- a. **Shadows, Laybacks and Height Next to a Metro Line**

RORZOR engaged in a discussion about the effects of building heights on residential properties across a Metro line.

Attachment F

The original zoning draft specified that the 30% layback line WOULD apply from the back property line of houses between Lewis Avenue and the Metro line and WOULD extend across the Metro line. This would have limited heights along the Metro to about 100 feet. In the final draft of the zoning, this provision was amended so that these Rockville Pike properties were exempted. We have not been able to determine WHEN this provision was altered, but it will have a devastating effect on many properties along Lewis Avenue.

Renderings presented by this applicant clearly show that shadows from 150 ft buildings will significantly shade the single family homes (SFH) along Lewis Avenue. This is the first time we have seen such renderings from an applicant. The applicant's property shades the commercial zone just north of Halpine Road, not any SFH's, but this is an important correction that should be addressed in the zoning code before any properties north of the "Fuddrucker's" site apply for permits.

b. Maximum/Minimum Block Sizes Need to be Added

If I (CYG) remember correctly, RORZOR did not address minimum or maximum block sized for redeveloping properties. This applicant's plan continues Chapman Avenue as provided (?) by the 1987 Rockville Pike Plan (the plan currently in effect), and adds a small cross street, Festival Street. Currently, traffic flows through this site by access points at the end of Chapman Avenue through the parking lots of the adjoining properties on Rockville Pike. It is a feature of the Pike that many parking lots are continuous and provide de facto secondary access routes. You can cut through parking lots from the end of Chapman up to the BB&T bank on Rockville Pike. Secondary streets (the Chapman extension) is supposed to extend to the Best Buy property.

There **MAY** be no provisions in our current zoning to chop large parcels into reasonably portioned blocks. We have seen projects (such as Twinbrook Gables) that essentially take a property and put a curb to curb giant building on the parcel. Property owners may not be required to chop a parcel into "city sized" blocks that would be sized to be pedestrian friendly. This would be especially devastating to the public interest if larger properties such as Congressional Plaza went "curb to curb" on its street elevation, creating buildings impermeable at street level to pedestrians, cars, and bicyclists. Developers might then opt for "elevated" towers and "green spaces" that would be restricted access and not accessible to the general public.

The Congressional Plaza property, for example, could accomodate 6 or more towers if required to create a "city block" layout. Imagine Congressional with a curb to curb fortress similar to the Twinbrook Gables project.

Plans for the Mid-Pike Plaza south of Montrose do chop their parcel into city blocks and provide a street level public street grid.

The 1987 Rockville Pike Plan does not really address this issue. The proposed Rockville Pike Plan assumes that "city blocks" with a secondary street grid will be created; in fact, this secondary street grid is critical to the new Plan's raison d'etre for increasing density and to providing reasonable transit access for cars, pedestrians, and bicyclists.

The Staff should be directed to inform the M&C as to how an appropriate street grid can/will be created through some of the larger properties along Rockville Pike. Properties such as Congressional benefit greatly from being rezoned to higher density mixed use, but there seems to be no mechanism for avoiding the "curb to curb" fortress, unless minimum/maximum block sizes are required.

THE APFO

In the spring of 2011, former Mayor Larry Giammo and (then) former City Councilman John Hall testified to the APFO committee that the City was NOT collecting school impact fees and taxes. Queries by the APFO committee to the City Attorney were not answered and to date there has been no communication that we know of from the City Attorney to the commission members except for one letter citing the appropriate state law that COULD be implemented. We have followed up on this issue with several developers and with the City and have not gotten consistant answers as to whether the City collects these taxes, collects comparable fees, or whether the County collects these taxes, as some developers seem to believe. We question whether the County CAN collect these taxes on properties within City limits. Our belief is that they cannot.

Recently on February 29, 2012, Planning Commission Chair David Hill queried Staff again as to whether these fees and/or taxes were being collected. Staff could not answer Mr. Hill's questions.

It is extremely troubling that the City does not know what taxes it is collecting, whether it can collect taxes, or whether Montgomery County is reaching into Rockville to collect these taxes. It is almost a year since Mr. Giammo and Mr. Hall opened this subject with the APFO committee. Since the end of Mr. Giammo's term in 2007 and the spring of 2011 - three plus years - to my knowledge this issue was not addressed or was even known to the sitting Mayor and Council, although in that time the City reviewed all its fees and increased many of them. The sitting Mayor and Council, to my knowledge, were not informed that this tax and/or fee was not being collected.

In the County, this issue has been highlighted by Nancy Floreen's proposal to waive school taxes for projects that agree to 25% MPDU's. While I think this proposal will fail in the County, it highlights the County's position that density is awarded ONLY in exchange for concessions for the public good, either by collecting school taxes or trading school taxes for additional MPDUs. (The County also requires upcounty Agricultural Reserve TDR's in many areas, including the Twinbrook Sector just south of the Rockville City boundary, which Rockville does not have a mechanism to enact within Rockville.)

In Rockville, it seems we have a tax-free, responsibility-free zone for developers.

Attachment F

Several developers of parcels on Rockville Pike have told us that the Rockville APFO does not apply to their developments since children generated by these projects would go to schools outside Rockville city limits. This could be the source of the confusion that the County will collect the school impact fees/taxes.

Shouldn't all these questions be resolved before the City of Rockville approves thousands of apartments on the Rockville Pike? We have seen at least 6 development proposals that will add apartments in great numbers (thousands of apartments). If the City approves these developments before straightening out the APFO tax quandry, won't Rockville be creating a significant shortfall in school construction funding? Hasn't Rockville already created a significant drain on the County's school construction fund by NEVER TO THIS DAY collecting school impact fees or taxes? Nobody seems to know the answer to these questions.

Questions that were raised about the City's failure to collect appropriate taxes in King Farm were used as campaign issues in the 2011 election. **The same attention should be paid to the school tax and/or fee collection or lack thereof in Rockville.**

The APFO makes explicit the implications of runaway development. The RORZOR committee was told many times that the APFO would restrain unsustainable development. The appetite of some council members to amend or even overturn Rockville's APFO is disheartening. The APFO is really the "canary in the coal mine" or the leading indicator that our development process is allowing development out of proportion to the actual capacity of the city to absorb new development projects.

This project, and every other propose project in Rockville including Silverwood, should be put on hold until the City can determine whether it is contributing appropriate revenues to the County for school construction. If the City cannot directly assess school taxes, it can consider other taxes and fees on the development projects that can capture the cost of providing public services to these developments.

Furthermore, the City should assess whether fees and/or taxes are being collected appropriate to fund the other public services being provided to these new developments.

NOTIFICATION AND OUTREACH

Notification about the Fuddrucker's project and for all other projects in the City are being sent from the developers' attorneys as per the RORZOR rezoning rewrite. The RORZOR committee's INTENT was to provide expanded public information AND to make the developers responsible for the expense. Discussion occurred on whether the City would ask for a fee and do the work or let the developers mail directly.

Based on the notices we have seen for recent projects, allowing the developers to develop their own outreach materials has caused RORZOR's goal of enhancing public information to be an abject failure. The notification for THIS project does not mention that any waivers are being requested, does not provide a street elevation view, does not specify the number of students that will be added to the school system, and does not mention a meaningful measure for the size or scope of the project except in the small type of the development data table. These notices provide only MINIMAL information that the average citizen could interpret. **The Mayor and Council should consider reclaiming the responsibility for these notices (by fee) and should also establish a protocol for what information should be included as relevant.** Referring citizens to a website is not sufficient. Not including a street elevation is not sufficient.

Furthermore, the NOTIFICATION requirements for development projects should be expanded to cover SCHOOLS AND COMMUNITIES, including those outside Rockville city limits, that are affected by projects within Rockville city limits. Students from the "Fuddrucker's" site will be bused into the Farmland elementary school cluster. We believe that no notice has been sent to those communities or PTAs that projects are being planned which will substantially change their schools or change their school boundaries (or to those affected by Silverwood). We estimate that upwards of 400 students may be sent to the Farmland ES and its cluster from the projects we have seen so far. No one outside Rockville seems to know that. You can ask Twinbrook Partners LLC how many notices they did send out - it was an astonishingly small number relative to the impact of this project.

SCHOOLS AND OTHER INFRASTRUCTURE IN A NON "PLANNED DEVELOPMENT" PROCESS

The RORZOR zoning rewrite basically abandoned the planned development process that was used for King Farm and other large developments. The PDP process forced City planners and developers to designate school sites, parks, and public facilities BEFORE development was approved. Similar protocols were followed in Gaithersburg with the Crown Farm development and are also implicit in the Science City sector plan.

The rush to develop and upzone along Rockville Pike calls into question whether such intense planning is occurring. Both Staff and developers seem to be ignoring the question of where supplemental schools will be sited. The proposed Hungerford elementary school will absorb excess students from Beall and possibly from some other developments, but it is wishful thinking to assume that if Rockville Pike is built out to full capacity, that no other schools will need to be built. School capacity can be seen as an easy proxy measure for other public services that will be needed for the residents of the thousands of apartments that are proposed.

Where is the strategic planning and guarantees for these public services, including site designation? The proposed Rockville Pike plan clearly intends to ignore or destroy the City's APFO, which would be disastrous.

In conclusion, as the first of many Rockville Pike projects that will be coming before the Planning Commission and the

Attachment F

Mayor and Council, the "Fuddrucker's" site plan raises a number of red flags that should be addressed by the Mayor and Council. During the RORZOR process, many decision points were elided or ignored. Now that specific, concrete projects are coming on line, decisions by former Mayors and Councils should be examined and adjusted. Densities in particular should be examined with a critical eye to practical issues of sustainability.

Sincerely,

Christina Y. Ginsberg
President, Twinbrook Citizens Association

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March 12, 2012

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VIA EMAIL AND HAND DELIVERY

Mr. Jeremy Hurlbutt
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Twinbrook Metroplace, Project Plan Application No. PJT2012-00002 (the "Application")—
Response to 2/27/12 City of Rockville Mayor and Council (the "Mayor and Council")
Public Hearing Comments

Dear Mr. Hurlbutt:

On behalf of Twinbrook Partners LLC and The Northwestern Mutual Life Insurance Company (collectively the "Applicant"), we are submitting this letter into the public record of the Application to specifically respond to issues and/or concerns raised in the public testimony delivered to the Mayor and Council at the public hearing on the Application held on February 27, 2012. Our intended purpose in submitting this letter is to have it serve as a resource to the Mayor and Council as they review the public hearing comments in preparation for the Discussion and Instruction scheduled for March 19, 2012.

While the majority of the public testimony was delivered in support of the Application (which we request the Mayor and Council to weigh heavily), the Applicant's responses below are limited to only concerns and/or issues relating to the Application:

1) *Has the alignment of Chapman Avenue Extended north of the project been resolved?*

Yes, as noted in the Staff Report to the Mayor and Council on pages 8-9 and indicated in the materials included in Attachment A to the Staff Report, pages 7-1 through 7-10, consensus was developed by the Applicant and the three property owners to the north of the project that an alternative alignment for Chapman Avenue was preferable to the proposed master plan alignment. The Applicant provided Staff with confirmatory materials to that effect (pages 7-1 through 7-10), and Staff supports the recommended realignment.

2) *What is the status of the new parking garage to be constructed at Twinbrook Metro Station?*

The parking garage is currently under construction.

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3) *How will sewer deficiencies in the area be addressed?*

The Applicant agrees to the conditions set forth in the water and sewer authorization letter from City Staff identifying deficiencies in the sewershed that must be addressed prior to the project proceeding. Further, the Applicant supports the formation of a "sewer club," and is working with applicants of other private development projects in the sewershed on an agreement that will establish a pro rata sharing of the costs of sewer improvements to ensure that the construction of the required sewer improvements is undertaken in a fair and equitable manner.

4) *What is the justification and quid pro quo for the proposed increase in height from 120 feet to 150 feet?*

Significant portions of the 6.75-acre property will be unavailable for actual building area, such as street dedication (1.31 acres), meaningful public use space and open areas (0.68 acres of public use space and 1.86 acres of open area), building setbacks, stormwater management utilizing the micro-bioretenment techniques inherent in environmental site design, etc. In addition to these dedicated areas of the property limiting building footprint, and thus requiring building height in order to make up density, "smart" buildings in transit-oriented settings mandate smaller footprints with greater building height. Specific to the standards set forth in the Zoning Ordinance for gaining maximum building height, the project proposes more than the minimum 10% required public use space (currently at 12.5%); less than the maximum 80% building coverage (currently at 70%); exceeds the urban design recommendations of the 1989 Rockville Pike Corridor Neighborhood Plan by creating an active, retail-oriented street edge along Rockville Pike and lining secondary streets with residential and retail; and will exceed the City's established energy conservation standards for those buildings for which additional building height is being requested. Failure to obtain the building heights proposed in the Application would jeopardize the economic viability of the project.

5) *School capacity is adequate for the project, but what would be the case if the project were located outside of the City and thus subject to the County schools test?*

Residents of the project will attend schools in the Walter Johnson Cluster, and as indicated in the Staff Report on page 10, under the City of Rockville FY12 school test, there will be no adverse impacts as a result of the project and thus school capacity is adequate to serve the project. If the project were subject to the Montgomery County schools test for FY12, schools in the Walter Johnson Cluster would also be deemed adequate to serve the project (with a school facilities payment for the elementary and middle school levels).

6) *Areas surrounding Rockville Pike are not being adequately studied or protected from impacts of the project, within the context of other nearby proposed developments.*

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As detailed throughout the materials submitted by the Applicant and in the Staff Report on the Application, both the individual effects of the project and the aggregate effect of development projects in the area have been analyzed. The determination of adequacy of public facilities – including roads and transportation, schools, water and sewer, and fire and emergency service – is determined based upon the totality of existing and proposed projects. As concluded by the Staff Report, all public facilities are adequate for the project.

7) *Can the Applicant locate and describe the proposed public use spaces?*

The Applicant was provided the opportunity to address this during the public hearing and, given this chance, reviewed the significant public use spaces located throughout the project, including the landscaped, pedestrian promenade along Rockville Pike, public use space lining Festival Street, and public use space areas located at the southern end of Chapman Avenue Extended nearest the Twinbrook Metro Station.

8) *Why is the office building proposed to be located on Rockville Pike, with the residential building located next to the Metro tracks?*

Again, the Applicant was given the chance to address this during the public hearing and cross-reference to that response is hereby made. To summarize, the Applicant currently anticipates that the office building would be constructed in the first phase of development of the project, and that as an anchor to the project it makes better planning sense to locate the building adjacent to Rockville Pike, with future phases constructed away from the Rockville Pike frontage. Also, office tenants are attracted to a Rockville Pike address and a strong Pike presence. Residents of the building located adjacent to the Metro tracks will not be adversely affected by Metro noise, as the building will be set back from the Metro tracks and noise mitigation techniques will be used in building materials and design to keep indoor noise levels below all required thresholds. As stated during the public hearing, the Applicant reserves the right to move uses within the project plan, subject to the approved conditions of the project plan, to meet market conditions and demand going forward.

9) *The height is too imposing on the aesthetics of adjacent neighborhoods, and the height should be limited to no more than the nearby Hilton Hotel.*

As the Applicant explained during the public hearing, there is a significant buffer between the project and the residential neighborhoods on the other side of the railroad tracks, and the building heights step up away from the tracks creating an even greater transition. There will be no shade impacts or other negative impacts on any residential uses in the area. Further, as noted above and in the Applicant's materials and in the Staff Report, the project satisfies the criteria for an increase in building height up to 150 feet which is the maximum permitted under the zone, as it proposes more than the minimum 10% required public use space (currently at 12.5%); less than the maximum 80% building coverage (currently at 70%); exceeds the urban design recommendations of the 1989 Plan

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by creating an active, retail-oriented street edge along Rockville Pike and lining secondary streets with residential and retail; and will exceed the City's established energy conservation standards for those buildings for which additional building height is being requested.

10) "Live, work, play" is a "fantasy" and not achievable.

The Applicant also addressed this during the public hearing. There are numerous examples of successful "live, work, play" projects throughout Montgomery County, including the City's Rockville Town Center, downtown Bethesda, and the new mixed-use projects underway in White Flint. The area around Twinbrook Metro Station is the next logical location for this type of redevelopment, as it fills in the gap between the Red Line Metro stations of White Flint and Rockville and the "live, work, play" environments surrounding each of those Metro Stations. Notwithstanding doubters, Twinbrook is ready to evolve into a vibrant, urban, mixed-use project that will provide the type of 18-hour environment conducive to "live, work, play".

11) While the Applicant anticipates that many residents, employees, and visitors to the project will utilize Metro, Metro cannot support the additional users.

The Applicant is confident that those living at, working in, and visiting the project will be able to utilize Metro to keep single-occupancy vehicle trips off the nearby roadways. Metro is in the process of making significant improvements to Red Line infrastructure in order to enhance service and improve performance, and Metro has repeatedly and publicly announced its commitment to making these improvements over the long-term. Metro has its own plans for future use of its facilities and an essential component to the long-term viability of the mass transit system is to have transit-oriented development such as this project in immediate proximity to the Metro Stations. As demand for Metro services increases, so too will the availability of transit services.

12) The Metro garage under construction will not be able to handle overflow parking from the project, and the City will have to construct public garages nearby to handle the cars.

The project is not reliant upon the adjacent Metro garage or any other public garages. As demonstrated in the Applicant's letter dated February 16, 2012 containing supplemental parking information (Attachment B to the Staff Report), the Application proposes the correct balance of parking to serve the needs of residents, employees, and visitors of the project, while encouraging those users to utilize alternative transportation (Metro and buses) to access the project. As noted by Staff at the February 27th public hearing, the Applicant's parking waiver request is not unusually high, and there are existing and pending projects in the City that have even higher parking waivers. Staff also noted that the precedent projects that the Applicant cited to in its February 16th letter of parking reductions already in effect in the City are functioning very well despite the reduced parking provided, and in fact, even with the parking reductions already in effect (similar to or greater than that requested for this project) there is more parking provided than is actually needed or

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used. Parking studies recently conducted by Montgomery County similarly conclude that the parking "maximums" established by Code are well in excess of that needed at transit locations, and it is against good public policy to encourage single occupancy vehicular trips by offering parking that is not needed. As a result, the Applicant is confident that the project proposes the correct number of parking spaces to satisfy need, and that overflow parking at the Metro garage or the need for the City to construct public garages will simply not be necessary.

- 13) *Notices of the public hearings before the Planning Commission and Mayor and Council were mailed to too few residents and the plans included with the notices were difficult to read.*

In addition to its own community outreach efforts and the conduct of community meetings, the Applicant mailed notices of the public hearings in accordance with all requirements of the City of Rockville Zoning Ordinance and the City of Rockville Development Review Procedures Manual. Copies of all notices were provided to Staff and are included in the Staff Report on the Application. There were abundant opportunities for public review and comment on this Application.

- 14) *What would happen to the project if the three requested waivers (height, parking, street section) are not approved?*

The Applicant responded to this question at the public hearing as well. In short, denial of the waivers would act to reject the urban redevelopment and the resulting public amenities and benefits for this transit location. If the requested increase in building height to 150 feet is not granted, the project will have to be significantly redesigned and may not be able to provide the large amounts of street dedication, public use space, and open area currently being provided. Similarly, if the parking reduction is not approved, the economics of the project will have to be reevaluated and the Applicant may have difficulty obtaining funding for the project. As noted by the Applicant at the public hearing, lenders are reluctant to fund projects for which too many parking spaces are provided, as structured and/or underground parking is very expensive compared to surface parking on a space-by-space basis. With regard to the street section modification, the purpose of this request is to widen the sidewalks from the 11 feet required by Code to 15 feet as proposed for the project, in order to increase the walkability and pedestrian friendliness of the project. If the modification is not approved, the sidewalk width would be reduced by four feet on both sides of each roadway, adversely affecting the pedestrian experience.

- 15) *A request was made of the Applicant to note where the parking garage entrances are located.*

The Applicant noted on the plan on display at the public hearing where the garage entrances are located: there will be three entrances off of Chapman Avenue Extended, with one entrance serving the garage for Buildings 1 and 2, one serving the garage for Buildings 3 and 4, and one serving the

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garage for Building 5; there will also be one entrance to the garage for Buildings 1 and 2 off of Festival Street, and another entrance to that garage off of the alley located on the southeast end of the project.

16) *Will the adjacent Hooters restaurant remain?*

The project does not include the property on which the Hooters restaurant is located, and thus the project itself will not affect the restaurant.

17) *How high above the Metro tracks will the green roof on Building 5 be located?*

The green roof is located on the third floor of the building, on the side closest to the Metro tracks. The building is stepped-back from the green roof, so upper floors above the third floor will look down onto the green roof.

18) *Where will the shadows of the proposed buildings be cast?*

The Applicant conducted shadow studies, which were included with the initial project plan application submitted to the City in July 2011. Images from the shadow studies were displayed at the public hearing, and demonstrated that shadows cast by the project's buildings will not adversely affect nearby properties, and in particular do not cast any shadows on the residential neighborhood located to the east of the Metro tracks given the width of the tracks and the industrial properties adjacent to the residential community to the east. [The distance from the eastern edge of the project's property line to the eastern edge of the railroad tracks is approximately 105 feet. The distance from the edge of the Building 5 parking garage, which is only three stories tall, to the nearest building on the east side of the tracks is approximately 175 feet. The distance from the Building 5 residential tower to the nearest building on the east side of the tracks is approximately 220 feet.]

19) *Will there be any on-street parking in the project?*

On-street parking spaces will be provided along both Chapman Avenue Extended and Festival Street.

20) *What are the widths of the sidewalks?*

The Applicant will be providing sidewalks along both sides of Chapman Avenue Extended and Festival Street, and these will be 15 feet in width from face of building to face of curb. It should be noted that the main purpose of the requested street section modification is to increase the sidewalk width from 11 feet as required by Code to 15 feet, in order to improve the walkability and pedestrian friendliness of the project.

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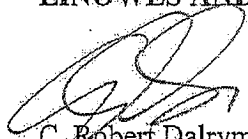
21) *What outdoor amenity space will be provided to residents of the project?*

All of the residential buildings will have outdoor amenity space for residents of the building. In addition, residents will have access to the public use spaces and open areas located throughout the project.

Having reviewed the tape of the public hearing, we are confident that this letter addresses each public comment or question that was raised as a concern or issue relating to the project. Again, we have not attempted to summarize the extensive testimony that was delivered in support of the project, as the overall general support of the project from the nearby and broader community was evident and impressive. Thank you for your consideration of the Application and this supplemental letter responding to testimony delivered at the Mayor and Council public hearing. Please contact us should you have any questions or require any additional information.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple



Heather Dlhopsky

cc: Ms. Brenda Bean
Mr. Bobby Ray
Mr. Jim Alexander
Mr. Tim Eden
Ms. Ines Vega
Mr. Daniel Ashtary
Ms. Nancy Randall



ideas that work

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March 12, 2012

VIA ELECTRONIC MAIL

Mayor Phyllis Marcuccio
and Members of the City Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20852

Re: 1592 Rockville Pike, Project Plan PJT2012-00002 (the "Project Plan")

Dear Mayor Marcuccio and Members of the City Council:

This letter is submitted on behalf of JBG/Twinbrook Square, LLC, the owners of the property located at 1800 Rockville Pike; 1900 Chapman Project Owner LLC (a Hines managed entity) and the owners of the property located at 1900 Chapman Avenue; and Twinbrook Partners, LLC, the applicant of the above-referenced Project Plan (collectively the "Owners"). At the onset, please note that JBG/Twinbrook Square, LLC and 1900 Chapman Project Owner, LLC are supportive of the Project Plan, with the inclusion of the sewer club concept described below.

The Owners, with the assistance of the City's Department of Public Works Staff, have been working cooperatively to address adequate public facilities issues relating to the available sewer capacity in the Twinbrook area. To this end, the Owners have determined that the most effective way to address this issue may likely be the creation of and participation in a private utility club.

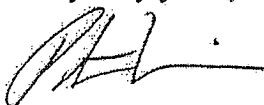
Briefly, and by way of background, the Owners are each in the process of pursuing land use approvals for the development of their respective properties. In connection with each development, the City's Adequate Public Facilities Ordinance ("APFO") and Adequate Public Facilities Standards ("APFS") require certain improvements to the City's sewer infrastructure to accommodate the proposed developments. The Owners, as well as the City Staff, have determined that the requirements and standards of the APFO and APFS may potentially result in a less than equitable allocation among the Owners of the required improvements, depending on the date of the land use approval and commencement of construction for each Owner's development.

Mayor Phyllis Marcuccio
and Members of the City Council
March 12, 2012
Page two

In an effort to address this potential inequity, the Owners, with the assistance of City Staff, have agreed in concept to a private utility club, which will ensure the equitable allocation of costs of the sewer improvements, based on each development's impact on the required improvements. The attached draft Memorandum of Understanding ("MOU") sets forth the general terms of the private utility club to which the Owners have conceptually agreed. As reflected in paragraph 6 of the MOU, the Owners request that any Project Plan or Site Plan letter of approval, as the case may be, shall include a condition referencing the Owner's obligation to participate in the private utility club. Given the draft nature of the MOU, the Owners respectfully request that they be permitted to submit proposed specific language addressing the obligation to participate in the private sewer club, prior to the issuance of the Project Plan approval letter.

We appreciate your consideration of this request. If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Patricia A. Harris

Attachment

cc: Mr. Tony Greenberg
Mr. Matt Hurson
Mr. Jim Alexander
Bob Dalrymple, Esq.
Nancy Regelin, Esq.

UTILITY CLUB
MEMORANDUM of UNDERSTANDING
Twinbrook Metro Station Area, Rockville, Maryland
March 12, 2012

Attachment F
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This Memorandum of Understanding ("MOU") serves to confirm the mutual intent of the undersigned property owners to cooperative construct and jointly fund the improvements to the public waste water utility system (sewer) in Rockville, Maryland. The principal terms to be included in a definitive agreement are summarized below:

1. The scope of the work is described in the attachment to this MOU labeled "Area of Sewer Deficiencies" dated March 2, 2012, prepared by the City of Rockville ("Preliminary Utility Deficiency Plan"). It is acknowledged that the scope of work described in the attachment is preliminary in nature and subject to revision.
2. The cost of the work is to be allocated by projected sewer flow by improvement for the UTILITY PROJECT, by way of example, to be finalized based on actual numbers:

Improvement	total cost	JBG TB Sq. LLC	1900 Hines	1592 TB Partners	Total
- waste contributed by each project -					
A	800,000	20%	30%	50%	100%
B (note 1)	500,000	40%	30%	30%	100%
C	400,000	0%	0%	100%	100%
D	300,000	20%	30%	50%	100%
	2,000,000				
- cost attributable to each project -					
A		160,000	240,000	400,000	800,000
B (note 1)		200,000	150,000	150,000	500,000
C		-	-	400,000	400,000
D		60,000	90,000	150,000	300,000
		420,000	480,000	1,100,000	2,000,000

Note 1 - excl. costs associated with sewer relocation to be borne by TBC 1A

3. The cost of the work will include all soft and hard costs, fees, assessments, insurance, performance and payment bonds (if any) as well as a management fee equal to direct personnel cost multiplied by 2.25. The management fee shall be paid to the initial builder responsible for construction of the improvements ("Constructing Owner") and based upon a good faith and non-binding estimate prepared by such Constructing Owner and approved by all Owners prior to the start of construction. The cost of the work will exclude the cost for land, if any, under the control of each Owner.
4. Costs shall be calculated and allocated based upon the flows associated with the uses and density included in the approved Project Plan, Site Plan or other development entitlement ("Project Entitlement") action which vests development rights, access to the municipal sewer system, and satisfies APFS for sewer for such project. In the event any Owner subsequently

amends their respective entitlement plan before commencement of construction of the UTILITY Project, cost and cost allocation shall be adjusted accordingly.

5. The obligation of each Owner to pay such costs shall terminate upon:
 - a) With respect to the Constructing Owner, the construction of the UTILITY Project;
 - b) Payment of its cost allocation by such Owner to the Constructing Owner, and/or
 - c) The failure of any Owner(s) to proceed with development pursuant to the Project Entitlement as evidenced by the expiration of the Project Entitlement prior to commencement of construction, provided however, that for ten (10) years after such expiration any new development entitlement approved for such Owner's land which receives access to the municipal sewer system and satisfies sewer APFS based on any part of the UTILITY Project shall be subject to the obligation to make payment of the cost allocation hereunder.
6. Any and all Project Plan, Site Plan and/or other development application now pending or submitted by the Owners shall include the following condition:

"Prior to issuance of a building permit for each building under this Approval, Applicant shall demonstrate to the City that it has satisfied its obligations under the Private Utility Club MOU executed by Applicant, a copy of which is attached as an exhibit to the Approval, and any related Private Utility Club Agreements. Evidence demonstrating satisfaction can include i) issuance of permits and posting of bonding for improvements to be constructed by the Applicant pursuant to the Private Utility Club MOU and Agreements, or ii) payment of monetary obligations to the appropriate constructing party pursuant to the Private Utility Club MOU and related Agreements."
7. Prior to commencement of construction of initial project, Owners will execute a comprehensive and definitive agreement. Terms of the agreement will include:
 - a) Owners will record a covenant in the land records confirming their obligations under the Agreement. The covenant will be subordinate only to the payment of real estate taxes.
 - b) The Owners will fund their pro-rata share of all costs as incurred, including engineering, construction and management fee.
 - c) The Owner of 1592 Rockville Pike (1592) shall have the right to fund it's allocated cost at the time of application for it's initial construction permit. In the event 1592 elects to do so, the cost of the work paid by 1592 shall include interest at the rate of 15% per year (pro-rated daily) from the date the cost of the work is funded by other Owners on behalf of 1592. Cost funded on behalf of 1592 shall be borne by the other Owners in proportion to their allocated cost for each improvement and interest paid by 1592 shall be paid to the Owner in proportion to such cost allocation. For example, if the cost of curing Deficiency A is \$800,000 with 1592, 1900 and 1800 being 50%, 30% and 20% responsible, respectively, the cost will be funded \$480,000 by 1900 (30 X 50 X \$800K) and \$320,000

by 1800 (20/50 X \$800K). Interest paid by 1592 on the \$500K funded on its behalf will be paid to 1900 and 1800 accordingly.

- d) In the event any Owner fails to make timely payment as required under the agreement, the following enforcement actions may be undertaken at the sole discretion of the other Owner(s):
 - i. The non-defaulting Owner(s) will have the right, but not the obligation, to pay the cost on behalf of the defaulting Owner(s).
 - ii. The non-defaulting Owner(s) will have the right, but not the obligation, to terminate construction of an improvement(s) which exclusively serves the property of the defaulting Owner.
 - iii. The City of Rockville will be notified that an Owner(s) to the agreement has defaulted upon a) the obligations set forth in the Agreement and b) the conditions set forth in the Site Plan of the defaulting Owner.
 - iv. The non-defaulting Owners will obtain a lien to be recorded in the land records of the defaulting Owner as provided in the record covenant.
 - v. Notwithstanding the non-defaulting Owner(s) decision to pay costs on behalf of the defaulting Owner(s), the past-due balance of the defaulting party will accrue interest at the rate of 15% per year, pro-rated daily. Interest paid, if any, will be allocated among the non-defaulting Owner(s) according to the relative cost allocation of the non-defaulting Owner(s).
 - e) The parties will agree to pursue, but the Agreement shall NOT be conditioned upon:
 - i. Entering an agreement with the City which would require all property owners within the sewer shed to make a monetary contribution to the 3 paying Owners at the time a permit is obtained by that property owner involving an increase in sewer flow. Any payments received by the Owners shall be credited subject to the cost allocation methodology.
 - ii. Obtaining a credit, such as the WSSC Front Foot Benefit Charge, against sewer tap and/or impact fees for system improvements made by the 3 Owners. Any credit against impact fees shall be apportioned subject to the cost allocation methodology (not the relative amount of tap/impact fee incurred by each Project/Property).
 - f) To the extent necessary for the work on the UTILITY Project, the Owners shall be obligated to provide temporary and permanent easements (and dedications where required by the City) on their land at no cost to the Constructing Owner.
8. To the extent any Owner shall receive monetary contributions from a non-party owner for the performance of the UTILITY Project, such amount shall be allocated to reduce each Owner's obligation to the extent such Owner's obligation has not yet been paid and/or distributed proportionately to each Owner that has paid its proportionate obligation for costs of the UTILITY Project.

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9. Nothing herein shall be construed to require any Owner to make any improvement in advance of what the City would require, absent this Agreement.
10. The parties acknowledge that Deficiency B in the Preliminary Utility Deficiency Plan may be cured by increasing capacity in the present location. However, the owner of Twinbrook Commons Phase 2 may require that sewer facilities in the area of Deficiency B be relocated simultaneous with the increase in capacity. In such event, the other Owners party to this agreement shall be responsible solely for the cost of increasing sewer capacity in its present location and the owner of Twinbrook Commons Phase 2 shall be solely responsible to pay all costs in excess thereof resulting from the relocation of the sewer facilities in the area of Deficiency B. Except for this Paragraph 10, the owner of Twinbrook Commons Phase 2 shall not be obligated to pay for any other utility improvements under this MOU.

The terms of this Memorandum of Understanding shall be substantially agreed to by each Owner prior to closure of public comment period for the initial project approval (expected to be 1592 Rockville Pike). The terms outlined above are subject to each Owner entering into a mutually acceptable and definitive agreement. Notwithstanding the nonbinding nature of this MOU, it is the mutual intent of all signatories below to work in good faith to memorialize these terms in a mutually agreeable binding agreement and to comply with the noted terms pending completion of the binding agreement.

ACKNOWLEDGED AND AGREED:

By: 1900 Chapman Project Owner, L.L.C.

Name: _____ (Signature)
_____ (Printed Name)
_____ (Company/Title)
Date: _____

By: JBG/Twinbrook Square, L.L.C.

Name: _____ (Signature)
_____ (Printed Name)
_____ (Company/Title)
Date: _____

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By: _____ (Property Owner, Twinbrook Commons, Phase 2)

Name: _____ (Signature)
_____ (Printed Name)
_____ (Company/Title)
Date: _____

By: _____ (Property Owner, 1592 Rockville Pike)

Name: _____ (Signature)
_____ (Printed Name)
_____ (Company/Title)
Date: _____:

Name: _____ (Signature)
_____ (Printed Name)
_____ (Company/Title)
Date: _____

1592 Rockille Pike - Record
Hurson, Matt
to:
mayorandcouncil@rockvillemd.gov
03/12/2012 04:55 PM
Cc:
"jhurlbutt@rockvillemd.gov"
Show Details

History: This message has been forwarded.
Please include this correspondence in the official record for the above captioned proposed project:

In an effort to address potential inequity in the cost of constructing public infrastructure, multiple property owners including the Applicant plan to enter into a cost-sharing agreement. The Owners expect to enter into a Memorandum of Understanding ("MOU"), setting forth the general terms of the private utility club. The MOU is expected to include a provision whereby any Project Plan or Site Plan letter of approval, as the case may be, shall include a condition referencing participation in the private utility club. Accordingly, I suggest that language along the lines of the following be included in the Project Plan approval letter:

"Prior to issuance of a building permit for each building under this Approval, Applicant shall demonstrate to the City that it has satisfied its obligations under a Private Utility Club MOU executed by Applicant, and any related Private Utility Club Agreements. Evidence demonstrating satisfaction can include i) issuance of permits and posting of bonding for improvements to be constructed by the Applicant pursuant to the Private Utility Club MOU and Agreements, or ii) payment of monetary obligations to the appropriate constructing party pursuant to the Private Utility Club MOU and related Agreements."

Thank you.

Matthew E. Hurson
Managing Director
Hines -US East Coast Region
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direct: 202.434.0253 | Fax: 202.347.2802 | Mobile: 240-476-4180
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